

# Akin Gump

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May 23, 2013

Anthony Herman  
General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: MUR 6734

Dear Mr. Herman:

This office represents John and Rita Canning. This is Mr. Canning's response to the complaint ("Complaint") designated as Matter Under Review ("MUR") 6734 by the Federal Election Commission ("Commission") which names him as a respondent. Ms. Canning is voluntarily joining Mr. Canning's response to expeditiously resolve this matter. As discussed in more detail below, Mr. and Mrs. Canning sought to comply with applicable contribution limits to candidates, political action committees and party committees and, in accordance with Mr. Canning's employer's political contributions policy, sought prior approval for their political contributions. Unfortunately, neither Mr. nor Mrs. Canning was aware of the biennial aggregate contribution limit and they unknowingly exceeded their limits for the 2011-12 cycle. If the Commission determines, after a review of the facts and information supplied herein, that formal proceedings are necessary to resolve this matter, we request that the Commission's alternative dispute resolution process or fast track resolution process be utilized to do so. Otherwise, we respectfully request the Commission take no action against Mr. and Mrs. Canning and dismiss this matter.

## THE RESPONDENTS

Mr. Canning is the founder and Chairman of Madison Dearborn Partners, LLC ("MDP") a Chicago-based private equity firm. He also currently serves on the Board of Directors of Corning Incorporated, Exelon Corporation, Milwaukee Brewers Baseball Club and Northwestern Memorial Hospital and on the Board of Trustees of the Museum of Science and Industry and Northwestern University. Mr. Canning is also a Trustee and former Chairman of The Chicago Community Trust, a Trustee and former Chairman of The Field Museum, Chairman of The Economic Club of Chicago, a former Director and Chairman of the Federal Reserve Bank of Chicago and a Director and Co-Chairman of The Big Shoulders Fund.

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Mr. Canning and his wife, Rita, have made significant charitable contributions to The Field Museum, Museum of Science and Industry, Harper Community College, Northwestern University, Northwestern Memorial Hospital, and Northwest Community Hospital. As Co-Chairman of The Big Shoulders Fund, Mr. Canning has helped raise over \$100 million for Chicago's inner-city parochial schools which serve 24,000 students, 80 percent minority and 62 percent from families that are living at or below the poverty level. Mr. and Mrs. Canning also provide 100 scholarships a year to inner-city students. They are the principal sponsors of WINGS (Women In Need Growing Stronger) which provides over 40,000 nights of shelter and other comprehensive services to abused women and their children. Mr. Canning is a recipient of the Ellis Island Medal of Honor, the Daniel H. Burnham Award for Distinguished Leadership and the Horatio Alger Award.

### COMPLAINT

On May 9, 2013, the Commission received the complaint from Melanie Sloan, on behalf of Citizens for Responsibility and Ethics in Washington, and Paul Ryan, on behalf of the Campaign Legal Center (collectively the "Complainants"). The complaint was received by Mr. Canning on May 18, 2013.

The Complaint alleges that Mr. Canning contributed more than the biennial aggregate limit of \$46,200 to federal candidates during the 2011-2012 election cycle. The Complaint further alleges that Mr. Canning made contributions totaling \$119,400. Attached to the Complaint was a copy of a Huffington Post article dated May 3, 2013. The Complainant offered no additional supporting information regarding contributions made by Mr. Canning.

### LAW

The Federal Election Campaign Act and accompanying Commission regulations prohibit an individual from contributing more than \$46,200 to all candidates for federal office and \$70,800 to all other political committees during the period January 1, 2011 through December 31, 2012. 2 U.S.C. § 441a(a)(3)(A) and (B); 11 C.F.R. § 110.5(b)(1)(i) and (ii). The aggregate biennial contributions limits of 2 U.S.C. § 441a(a)(3) do not apply to donations made to the recount fund of a federal candidate, the federal account of a state party committee, or to a federal political party committee. See Advisory Opinions 2006-24 and 2009-04.

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## DISCUSSION

Contrary to the Huffington Post article cited in the Complaint, at no time did Mr. or Mrs. Canning intend to violate the biennial contribution limits and any contributions exceeding the biennial aggregate contribution limit were inadvertent. Mr. and Mrs. Canning have taken corrective action to bring their contributions into compliance with the law.

### *Good Faith Efforts*

As the Chairman of MDP, a private equity firm that is highly regulated by the Investment Advisers Act of 1940, Mr. Canning is acutely aware of and seeks to comply with applicable rules and regulations by encouraging a culture of compliance within the firm. For example, as an investment adviser under the Investment Advisers Act of 1940 subject to SEC Rule 206(4)-5<sup>1</sup>, MDP is required to maintain policies and procedures designed to prevent a violation of the rule. This policy mandates that all employees of MDP, their spouses and dependent children disclose and seek prior approval for all political contributions.<sup>2</sup> Mr. and Mrs. Canning's contributions, including those at issue herein, were submitted for prior approval in compliance with the policy.

Like many other contributors mentioned in the Huffington Post article, Mr. and Mrs. Canning were not aware of the biennial contribution limits. While it may seem surprising to full-time political professionals that an individual could be unaware of the biennial contribution limits, it is common practice that potential contributors are only informed of contribution limits applicable to a particular recipient entity and at no time is a potential contributor informed that there are also aggregate contribution limits that also in effect. Standard disclaimers inform a contributor that: her contribution is not deductible for federal income tax purposes; her contribution will be used for political purposes; only U.S. citizens and permanent residents may contribute; contributions from corporations are prohibited; and the recipient entity must use its best efforts to report a contributor's name, address, employer and occupation. Most disclaimers

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<sup>1</sup> Rule 206(4)-5 prohibits an investment adviser from providing advisory services for compensation to a government client for two years after the advisor or certain of its executives or employees make political contributions to certain elected officials or candidates. The Rule was implemented to address pay to play practices by investment advisers.

<sup>2</sup> Although the policy mandates that all contributions be pre-cleared, the policy cautions that pre-clearance does not necessarily mean that the contribution is in compliance with applicable campaign finance laws, including contribution limits.

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also include a maximum contribution amount as well as an attestation that the funds contributed are not being provided by another person or entity.

For a contributor seeking to comply with complex campaign finance laws, it would appear that the multitude of disclaimers on solicitations cover the universe of laws governing a contribution. However, as evidenced by the Huffington Post article and Mr. and Mrs. Canning's own contributions, contributors are not informed of the additional limitations at the time of their contribution.

In all material respects, Mr. and Mrs. Canning complied with the contribution limits required under 11 C.F.R. § 110.1 and did not exceed the limits to individual candidates or other political committees. Furthermore, it should be noted that all of Mr. and Mrs. Canning's contributions were made in their respective names and appropriately attributed to each. Mr. and Mrs. Canning did not seek to hide or disguise their contributions because they legitimately believed that they were in compliance with federal campaign finance laws.<sup>3</sup>

#### *Corrective Action*

According to our review and provided for your reference, Mr. Canning made contributions aggregating \$120,700 to federal candidates and \$156,600 to federal political party committees and other political committees. Mrs. Canning made contributions aggregating \$55,000 to federal candidates and \$81,600 to federal political party committees and other political committees. When Mr. and Mrs. Canning first became aware that they may have exceeded the biennial aggregate contribution limit for the 2011-12 election cycle, they immediately contacted counsel and directed counsel to rectify the contributions. On Mr. and Mrs. Canning's behalf, on April 12, 2013 counsel sent certified letters requesting refunds to thirty four committees, including candidate committees and other political committees. To date, nineteen committees have provided a response indicating that a refund would be issued, seeking reattribution, or declining to issue a refund. On May 21, 2013, counsel sent a second letter to the nonresponsive committees requesting a refund. Although the Complaint only alleges that Mr. Canning exceeded his biennial limits to candidates, Mr. Canning has also taken steps to correct contributions made to political party committees and other committees for which he may have

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<sup>3</sup> Complainants spend a significant amount of time discussing the injuries they suffer when the Commission "fails to properly administer the FECA's reporting requirements." Presumably, however, the proper reporting of the contributions at issue served as the very source of information cited by the Huffington Post and used as the basis of this Complaint.

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exceeded the biennial contribution limits. Mrs. Canning has also taken remedial action for any problematic contributions.

Although not required to do so, MDP is taking steps to enhance its processes to educate its employees of the various rules and limits regarding federal political giving including the biennial contribution limits applicable to their federal contributions.

*Conclusion*

As this submission demonstrates, Mr. and Mrs. Canning took immediate action once they learned that they may have exceeded the biennial contribution limits. Outside legal counsel was retained to identify and remedy the excessive contributions. Mr. and Mrs. Canning have also instituted new controls and procedures to ensure that the problems that occurred during the 2011-12 cycle are not repeated. For example, contributions will no longer be made via joint fundraising committees but will instead be made directly to the recipient committees to ensure that tracking of respective limits are more precisely followed.

Mr. and Mrs. Canning are prepared to fully cooperate with the Commission to quickly and fairly resolve any outstanding issues in connection with this matter. Given the fact that Mr. and Mrs. Canning have taken appropriate steps to correct their mistakes and they did not intentionally violate the law, they respectfully request that the Commission take no action and dismiss this matter. If formal proceedings are required to resolve this matter, Mr. and Mrs. Canning request the Commission's alternative dispute resolution or fast track resolution process.

We are available at your convenience to answer any additional questions or concerns.

Respectfully submitted,

  
Melissa L. Laurenza